

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GIOVANNI BATTISTA BELTRANI

Appeal No. 2000-0902
Application No. 08/804,466

ON BRIEF

Before FRANKFORT, STAAB, and McQUADE, Administrative Patent Judges.

STAAB, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 1-5 and 7-12, and from the examiner's refusal to allow claim 17, added by an amendment filed subsequent to the final rejection. Claim 13, the only other claim currently pending in the application, has been indicated by the examiner as being allowable if rewritten in independent form.

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Appellant's invention pertains to an adjustable back strap for diving and swimming equipment. A further understanding of the invention can be derived from a reading of exemplary claim 1 which appears in the appendix to appellant's brief.

The references of record relied upon by the examiner in support of the rejections are:

Currie 1957	2,799,020	Jul. 16,
Daley 1967	3,339,206	Sep. 5,
Krauss 1992	5,144,725	Sep. 8,
Zachry, Jr. (Zachry) 1993	5,181,280	Jan. 26,

The claims stand rejected under 35 U.S.C. § 103 as follows:

(a) claims 1-5 and 17, unpatentable over Zachry in view of Currie;

(b) claim 4, unpatentable over Zachry in view of Currie and Daley; and

(c) claims 5 and 7-12, unpatentable over Zachry in view of Currie and Krauss.

Reference is made to appellant's brief (Paper No. 16) and

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to the examiner's final rejection and answer (Paper Nos. 11 and 17) for the respective positions of appellant and the examiner regarding the merits of these rejections.

Rejection (a)

Independent claim 1, the broader of the two independent claims on appeal, calls for an adjustable back strap comprising a pair of attachment members connected to ends of a strap for securement to equipment for diving and swimming, at least one of the attachment members being provided with adjustment means to vary the length of the strap,

. . . and buckle means provided on said strap to perform quick opening and closing of said strap, wherein said strap is formed by two distinct and separate strap sections each having respective first and second ends, the first end of each section being connected to a respective one of said attachment members and said buckle means being connected to said second ends of said strap sections for connecting and separating said strap sections relative to each other.

Independent claim 17 contains similar limitations.

Zachry pertains to a strap retainer 10 (see Figure 1) for attaching a retaining strap 60 to safety equipment such as goggles 50 for quick positioning, securing and release of the equipment by the user. The strap retainer 10 includes a clamp

section 20 for varying the effective length of the strap 60 and an attaching means 40 for attaching the strap retainer to the goggles.

Currie pertains to a diving mask, and in particular to a diving mask wherein a mask body 10 of rubber material is initially molded as an integral one piece, substantially flat, band-like preform (see Figure 2), and then deformed around a lens element 34 and bonded at edges 30, 32 to form a finished mask.

The examiner correctly finds that Zachry's strap retainer 10 corresponds to the claimed attachment members having adjustment means for varying the length of the strap. The examiner further correctly finds that the strap of Zachry is not formed by two distinct and separate strap sections that can be opened and closed by means of a buckle, as now claimed. Turning to Currie, the examiner finds that this reference teaches a buckle 23' located at the ends of straps 16 and 18 for securing the straps behind a wearer's head. Based on these findings, the examiner concludes (final rejection, pages 2-3) that it would have been obvious

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to use the buckle of Currie on the strap of Zachry in order to provide a strap which can be readily detached from the goggle frame or adjusted in length (as taught by Zachry) as well as being readily securable about the back of the head of the wearer as suggested by Currie.

We cannot support this rejection. Initially, we consider that the proposed modification of Zachry would result in a needless duplication of parts (namely, adjusting means) in Zachry for no apparent purpose other than to meet the terms of the claims. In this regard, since the strap retainer 10 of Zachry already provides for both adjustment of the length of the strap (column 3, lines 48-63) and removable attachment of the strap to

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the goggles (column 3, line 64 through column 4, line 24), there would appear to be no cogent reason for providing an additional buckle on the strap.

Moreover, the thrust of Zachry is the provision of a strap retainer especially useful for safety equipment such as goggles, face masks or respirators to protect the eyes and face from foreign and often hazardous materials (column 2, lines 39-43). To this end, goggles 50 are intended to be quickly pulled over a hardhat or other headgear, placed over the eyes, and the retaining strap then tightened by pulling the end of the strap back away from the face and through the clamp section 20 to securely tighten the goggles, all in a matter of approximately 3 seconds (column 2, lines 10-21). In light of this intended use, the critical need for providing secure retention of the strap in a tightened condition would render the provision of an additional buckle such as that shown in Currie of little or no use, and in fact might even be counterproductive because it may very well provide an additional point of strap release.

Finally, since neither of the references individually teaches two distinct and separate strap sections each having

respective first and second ends,¹ it is inappropriate, in our opinion, for the examiner to view their collective teachings as suggesting such an arrangement.

The mere fact that the prior art could be modified does not make such a modification obvious absent suggestion of the desirability of doing so. *See, for example, In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). From our perspective, the only suggestion for putting the selected pieces from the references together in the manner proposed by the examiner is found in the luxury of hindsight accorded one who first viewed the appellant's disclosure. This, of course, is not a proper basis for a rejection. *See In re Fritch*, 972 F.2d 1260, 1266 n.15, 23 USPQ2d 1780, 1783-84 n.15 (Fed. Cir. 1992).

In light of the foregoing, we shall not sustain the standing § 103 rejection of claims 1-5 and 17 as being unpatentable over Zachry in view of Currie.

Rejections (b) and (c)

¹The strap sections 16, 18 of Currie, being integrally molded with the body of the mask, are not seen as teaching or suggesting this claim limitation.

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We have carefully reviewed the Daley reference additionally applied in the rejection of claim 4, and the Krauss reference additionally applied in the rejection of claims 5 and 7-12, but find nothing therein to render obvious what we have found to be lacking in Zachry and Currie. We therefore shall not sustain either of these rejections.

Conclusion

Each of the examiner's rejections is reversed.

The decision of the examiner is reversed.

REVERSED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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)	
JOHN P. McQUADE)	
Administrative Patent Judge)	

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SUGHRUE, MION, ZINN, MACPEAK & SEAS
2100 PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C. 20037-3202